

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY CARACAS

C O N F I D E N T I A L STATE 306831

E.O. 11652: GDS

TAGS: ENRG, PFOR, VE

SUBJECT: OIL COMPANY PROBLEMS

REFS: A) STATE 26424; B) CARACAS 10850;
C) CARACAS 11457; D) CARACAS 11481
E) CARACAS 9936; F) STATE 273285; G) STATE

1. DEPARTMENT GREATLY APPRECIATES ASSURANCES OF
PRESIDENT PEREZ TO SECRETARY (REFTEL C) AND OF MINISTER
OF ENERGY HERNANDEZ TO AMBASSADOR (REFTEL D). THEY
ARE AN INDICATION OF VENEZUELA'S INTENT TO MOVE IN THE
RIGHT DIRECTION. AT THE SAME TIME, GULF OIL REPORT ON
GOV RECONSIDERATION OF DEDUCTIONS FOR RESTORATION AND
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REPLACEMENT OF ASSETS (REFTEL G) INDICATES AGREEMENT
WITH THE COMPANIES WILL REQUIRE FURTHER MOVEMENT.

2. WE BELIEVE IT IMPORTANT THAT AMBASSADOR FOLLOW UP
ON THE SECRETARY'S PRESENTATION WITH PRESIDENT PEREZ.
AMBASSADOR IS REQUESTED TO MAKE THE FOLLOWING POINTS
IN HIS PRESENTATION. THESE POINTS DRAW ON THE AIDE

MEMOIRE CONTAINED IN REFTEL A, TAKING INTO ACCOUNT THE
PROGRESS STIMULATED BY THE EXCHANGES OF THE SECRETARY
AND THE AMBASSADOR WITH GOV. FOLLOWING YOUR REPRESENTATION
TO PRESIDENT PEREZ, WE SHALL WANT TO REVIEW THE SITUATION

TO DETERMINE IF DISCERNIBLE FURTHER PROGRESS HAS BEEN
MADE. WE MAY WISH AT THAT TIME TO RE-EXAMINE THE
QUESTION OF A WRITTEN PRESENTATION TO THE GOV.

3. (A) AS PRESIDENT PEREZ WELL KNOWS, THE USG HAS
FOLLOWED WITH THE CLOSEST ATTENTION THE PROCESS OF
NATIONALIZATION OF AMERICAN OIL COMPANY INTERESTS IN
VENEZUELA. THE USG HAS APPRECIATED ASSURANCES BY THE
GOV THAT IT INTENDS TO TREAT THE COMPANIES IN A FAIR
FASHION CONSONANT WITH VENEZUELA'S DEMOCRATIC PROCESSES.
SECRETARY VANCE PARTICULARLY APPRECIATED CAP'S STATEMENT
THAT HE DID NOT WISH TO BLEMISH THE NATIONALIZATION
DECISION WITH UNFAIR PROCEDURAL IMPLEMENTATION, AND
THAT A SITUATION IN WHICH GOV CLAIMS WERE GREATER THAN
THE AGREED COMPENSATION IS INTOLERABLE.

(B) OUR CONCERN FOR THE EQUITABLE SETTLEMENT OF
PROBLEMS POSED BY THE NATIONALIZATION DERIVES FROM OUR
DESIRE THAT THE COMPANIES RECEIVE THE AGREED UPON
COMPENSATION WITHOUT UNJUSTIFIED DEDUCTIONS, AND THAT
COOPERATION IN THE PETROLEUM SPHERE BETWEEN US
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COMPANIES AND THE GOV, AND THE USG AND THE GOV, SHOULD
BE ENCOURAGED TO CONTINUE. RECENT REPRESENTATIONS FROM
A NUMBER OF COMPANIES TO US HAVE MADE CLEAR THAT THEY
HAVE SUBSTANTIAL RESERVATIONS ABOUT THE FASHION IN WHICH
COMPENSATION PROBLEMS HAVE SO FAR BEEN HANDLED. THESE
CONCERNS RELATE TO THREE CATEGORIES OF GOV CLAIMS.

I. CLAIMS FOR RESTORATION AND REPLACEMENT OF ASSETS

THE EQUITABLE BASIS FOR SUCH DEDUCTIONS HAS BEEN
PARTICULARLY CHALLENGED BECAUSE COMPENSATION FOR NET
BOOK VALUE WAS AGREED UPON -- COMPENSATION WHICH ASSUMES
DEPRECIATION OF ASSETS. THE USG BELIEVES THAT, IN ANY
EVENT, DEDUCTIONS SHOULD NOT EXCEED THE REASONABLE COSTS
OF ACTUALLY PLACING THE ASSETS IN GOOD WORKING ORDER, NOR
SHOULD THE PROPOSED DEDUCTIONS FOR RESTORATION OR REPLACE-
MENT OF PARTICULAR ASSETS EXCEED THE COMPENSATION FOR
THESE SAME ASSETS. IT IS UNDERSTOOD IN THIS CONNECTION
THAT VENEZUELA HAS GENERALLY MAINTAINED PRENATIONALIZATION
PETROLEUM PRODUCTION LEVELS WITHOUT EXTRAORDINARY INVEST-
MENT EXPENDITURES, WHICH RAISES QUESTIONS ABOUT THE
EXTENT OF THE DEDUCTIONS THAT ARE APPROPRIATE. THE USG

IS GRATIFIED TO KNOW THAT THE GOV IS NOW RE-EXAMINING PROPOSED DEDUCTIONS FOR RESTORATION AND REPLACEMENT OF ASSETS ON THE BASIS OF NEW CRITERIA.

II. COMPTROLLER GENERAL'S TAX CLAIMS

THE USG IS CONFIDENT THAT THE GOV WILL BEAR FULLY IN MIND THE CLARITY OF VENEZUELAN LAW AND OF GENERAL PRINCIPLES OF LAW REGARDING RETROACTIVE APPLICATION OF LEGISLATION. IT WILL BE APPRECIATED THAT ANY FINDING ON THOSE CLAIMS WHICH APPLIED THE LEGISLATION IN QUESTION RETROACTIVELY WOULD BE UNACCEPTABLE TO THE COMPANIES AND A CAUSE OF GREAT CONCERN TO THE USG. THE USG PARTICULARLY APPRECIATES CONFIDENTIAL

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THE ASSURANCES IN RESPECT OF THE COMPTROLLER GENERAL'S CLAIMS WHICH PRESIDENT PEREZ EXTENDED TO PRESIDENT CARTER IN WASHINGTON. THE USG URGES THE GOV TO DO ALL THAT IS POSSIBLE TO RESOLVE THESE CLAIMS IN A MANNER THAT IS CONSISTENT WITH THE PRINCIPLES INVOLVED. THE ASSIGNMENT BY THE GOV OF LEGAL ADVISERS TO THE COURTS TO FACILITATE THE PROGRESS OF THESE CLAIMS THROUGH THE COURT SYSTEM IS A HELPFUL STEP. THE USG HOPES THAT THE GOV WILL CONSIDER OTHER APPROPRIATE STEPS, INCLUDING FORMAL SUBMISSION TO THE COURTS OF THE GOV VIEW THAT THESE ASSESSMENTS ARE NOT JUSTIFIED IF THIS HAS NOT BEEN DONE.

III. OTHER TAX CLAIMS

THE USG HAS BEEN PLEASED TO LEARN THAT THE MINISTRY OF FINANCE HAS APPOINTED A NEW COMMISSION TO REVIEW THESE CLAIMS AND REACH A SETTLEMENT OF THEM. IT IS UNDERSTOOD THAT THE TAX LAW PROVIDES THAT NO PENALTIES SHALL BE ASSESSED IF A DEDUCTION IS DISALLOWED ON THE BASIS OF DATA SUPPLIED BY THE TAXPAYER IN THE PERTINENT TAX RETURN. WHILE APPRECIATING THAT THERE IS ROOM FOR DIFFERENCE OF OPINION IN THIS REGARD IN EACH CASE, THE COMPANIES MAINTAIN THAT THEY GENERALLY SUPPLIED SUCH DATA IN THEIR TAX RETURNS, BUT THAT PROVISIONAL PENALTIES AS HIGH AS 105 PERCENT NEVERTHELESS HAVE BEEN IMPOSED. THE UNITED STATES TRUSTS THAT, TO THE EXTENT THE DATA IN QUESTION ACTUALLY WAS PROVIDED, THESE FINES WILL NOT BE DEFINITELY IMPOSED IN ANY RESOLUTION OF THESE TAX CLAIMS.

THE USG LOOKS FORWARD TO THE PROMPT AND EQUITABLE SETTLEMENT OF THE PENDING CLAIMS AFFECTING THE COMPENSATION DUE TO THE COMPANIES UNDER THE NATIONALIZA-
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TION LAW. IT BELIEVES THAT SUCH A SETTLEMENT WILL BE
MUTUALLY BENEFICIAL TO VENEZUELA AND THE COMPANIES AND
THAT IT WILL FURTHER STRENGTHEN THE CLOSE AND CORDIAL
RELATIONS THAT EXIST BETWEEN THE UNITED STATES AND
VENEZUELA. VANCE

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